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Facing down government security leaks

BRITISH Prime Minister Margaret Thatcher and President Reagan are firm believers in tradition — particularly when government security is at stake.

And both are banking on laws enacted in the early part of the century to help plug growing leaks of classified information in their respective lands. More important, Mrs. Thatcher is eager to preserve her country's Official Secrets Act (OSA) of 1911, which is under fire in Parliament and could be ultimately shelved or significantly revised.

The United States, at present, has no OSA. But it does have an Espionage Act dating back to 1917, which Mr. Reagan and his administration would like to see broadened for prosecuting private citizens who leak government-classified information to the press and others.

If this comes about by legislative fiat or judicial interpretation, the US would then, in effect, have its own official-secrets act. A case now pending makes this a very real issue — and, to many, an imminent danger.

Mrs. Thatcher recently lost a key round in this battle when a British jury refused to convict civil servant Clive Ponting for violating the 1911 law. A senior government official of the Defense Ministry, Mr. Ponting was indicted under this broad-based statute for giving classified material to a member of Parliament. His disclosures on the sinking of an Argentine cruiser during the Falklands war, with the loss of more than 350 lives, were at odds with the government's version of the episode.

Ponting's acquittal is said to be a potentially devastating blow to Britain's OSA. The secrets law likely won't be repealed. But important changes may be in the wind — such as limiting its application to only the most serious offenses, such as major violations of national security, as opposed to minor infringements of civil service rules.

Meanwhile, on this side of the Atlantic, a federal court in Baltimore is hearing a case brought by the government against Navy intelligence analyst Samuel Loring Morison. Mr. Morison is accused of selling classified photographs to a British magazine, *Jane's Defence Weekly*, which published them last summer. The photos showed a Soviet aircraft carrier under construction at a port in the Black Sea.

There were no spies involved or any hint of traitorous conduct. And the case seemed to be of minor interest until US District Judge Joseph H. Young recently ruled — in denying a motion to dismiss — that Mr. Morison could be prosecuted under the 1917 Espionage Act. The government had argued that this law applied to the situation since foreign agents read

the magazine that printed the photographs supplied by Morison.

What this now means is that the trial may proceed without the government prosecutors having to show injury to the US. The US need only prove that the material in question was classified and improperly used by the defendant.

If Morison is found guilty, he would be the first in the US to be convicted under the Espionage Act who did not knowingly conspire with a foreign power. A maximum penalty could be 40 years in prison and a \$40,000 fine.

Expectedly, civil liberties groups are alarmed over the First Amendment implications of using a "spy" law to plug security leaks by government employees. In 1971, the Nixon

administration attempted to use the same act to prosecute Daniel Ellsberg and Anthony Russo for giving the Pentagon Papers to the press. Before jury deliberations began, however, a mistrial was declared when the government admitted to illegal wiretapping of the defendants.

More recently, the Reagan administration considered, but ultimately decided against, pursuing a proposal by the Central Intelligence Agency to make it a crime for government workers to disclose national secrets without authorization.

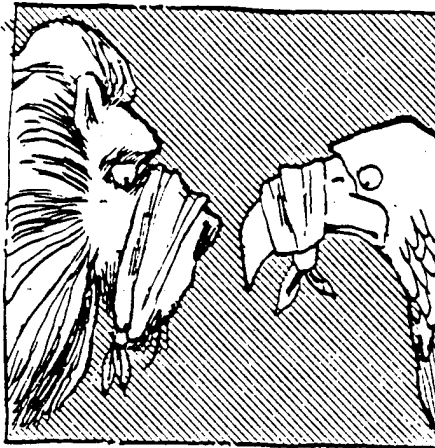
"It's a chilling wind," says John Shattuck, Harvard University vice-president and former counsel to the American Civil Liberties Union. "The fact that the CIA proposal was even made is a disturbing matter." It would, in effect, have created an official secrets act for classified information, Mr. Shattuck says.

The Harvard official insists that "real secrets" are protected by a range of statutory law. And he says the equivalent of Britain's Official Secrets Act in the US would be in direct conflict with the Constitution.

Alan Adler, legal counsel for the Center for National Security Studies, has similar concerns. And he says the media should be especially worried. Mr. Adler explains that Judge Young's ruling in the Morison case sends the message that "espionage laws apply to unauthorized disclosures of classified information to the press."

The media are worried. What the government sees as a bolstering of national security by using the clout of criminal prosecution (even a "spy" law) against offenders would surely be viewed by the press as a muzzling of information and a censoring of the public's right to know.

JUSTICE



'Real secrets' are protected by a range of laws in the US, says John Shattuck of Harvard University. And the equivalent of Britain's Official Secrets Act here would be in direct conflict with the Constitution.

A Thursday column